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DONG YANG ELEVATOR (M) SDN BHD v. MXC ELEVATOR SDN BHD & ORS

HIGH COUR MALAYA, SHAH ALAM
FAIZAH JAMALUDIN J
[CIVIL SUIT NO: BA-22NCC-83-07-2019]
B 29 SEPTEMBER 2022

Abstract – *An apology is not an automatic 'get out of jail card' for a contemnor. It must be unreserved and made with genuine remorse. The contemnor must also have admitted to his wrongdoing, pleaded guilty to the contempt and purged his contempt before tendering his unreserved apology.*

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CIVIL PROCEDURE: *Committal proceedings – Contempt of court – Breach of Anton Pillar order ('AP order') – Applicant obtained AP order against proposed contemnors in suit based on conflict of interests, breach of fiduciary duties, breach of trust, misuse of confidential information, knowing assistance and conspiracy of unlawful means – Proposed contemnors injuncted from hiding, concealing, amending, changing, damaging, manipulating, disturbing and/or destroying any or all of documents and/or information involved – Whether proposed contemnors in breach of AP order by hiding and/or concealing evidence and by hiding, destroying and/or deleting emails, documents and evidence – Whether proposed contemnors in contempt of court order – Rules of Court 2012, O. 52 r. 4*

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The plaintiff company ('plaintiff') was incorporated in November 2002 and had, since February 2003, been involved in the business of the supply, installation, testing, commissioning and maintenance of elevators and escalators. The first defendant company ('D1') was incorporated in July 2018 and was also involved in the business of elevators and escalators. The second ('D2'), fifth ('D5'), sixth ('D6') and seventh ('D7') defendants were former employees of the plaintiff. It was the plaintiff's case that since its incorporation, many of the plaintiff's businesses and clients had been unlawfully siphoned to the first defendant to the detriment of the plaintiff. After D2, D5, D6 and D7's resignation, the plaintiff had engaged a forensic investigator, Virdos Lima Consultancy (M) Sdn Bhd ('VL') to conduct a forensic analysis and to investigate the electronic stored information extracted from the desktop computers used by D2, D5 and D6. VL found, among others, that D2 had set up D1 while he was still employed by the plaintiff and the plaintiff's confidential information had been used for the benefit of D1. The plaintiff filed an action against the defendants for conflict of interests, breach of fiduciary duties, breach of trust, misuse of confidential information, knowing assistance and conspiracy of unlawful means. The plaintiff also filed an *ex parte* application for an *Anton Pillar* order ('AP order'). The AP order, which was granted, compelled the defendants to allow

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the plaintiff's agents and representatives entry into D1's office and D2's and D5's residences and cars, to forensically image devices containing the documents and information listed in the AP order and to deliver up to the plaintiff's supervising solicitor the documents and information that were in their custody, care and/or control. Under the AP order, the defendants were injuncted from hiding, concealing, amending, changing, damaging, manipulating, disturbing and/or destroying any or all of the documents and/or information. The applications in encls. 98 and 99 were the plaintiff's applications under O. 52 r. 4 of the Rules of Court 2012 for committal against D2, D6 and two of D1's employees, namely Nur Syaza Ayuni ('Syaza') and Nur Atiqah ('Atiqah') ('proposed contemnors') for contempt of court by reason of their alleged breaches of the AP order by hiding and/or concealing evidence and by hiding, destroying and/or deleting emails, documents and evidence. As against D2, the plaintiff contended that: (i) D2 had handed over a bag containing a cheque book, documents, an external hard disk, two portable data drives and one micro SD card to a third party for safekeeping ('wrongful act 1(i)'); (ii) D2 had concealed his knowledge of the password to D1's email address and/or lied about his knowledge of the password to the email address in order to stall the handover of the said email address ('wrongful act 2(i)'); (iii) by stalling the handover of the email address to the supervising solicitor, D2 caused the deletion of the emails from D1's email ('wrongful act 3(i)'); (iv) D2 concealed his knowledge and/or whereabouts of one of his cars by deception, by saying that he had no knowledge of the said car ('wrongful act 4(i)'); and (v) D2 refused to hand over his two handphones for forensic imaging despite various requests to do so ('wrongful act 5'). As against D6, Syaza and Atiqah, the plaintiff contended that (i) D6, Syaza and Atiqah had deleted files from their respective desktop computers ('wrongful act 1(ii)'); (ii) D6 and Syaza had enabled remote access to their respective desktop computers for the deletion of files from their respective desktop computers ('wrongful act 2(ii)'); (iii) Syaza had assisted in the removal of a hard disk drive from D1's office ('wrongful act 3(ii)'); and (iv) Syaza had uninstalled Microsoft One Drive from her desktop computer ('wrongful act 4(ii)').

Held (sentencing D2, D6 and Syaza to 15, five and three days' imprisonment, respectively):

(1) The plaintiff's agents who were waiting at the guardhouse of D2's residence saw D2 passing a black bag to a Peugeot car. D2's neighbour ('Jeremie') confirmed that he was the person driving the Peugeot that was seen receiving the black bag. Jeremie averred that (i) D2 had contacted him and asked him to meet at the shop lots outside their residential area; (ii) he then met D2 outside the residential area and D2 has passed him a black Prada bag which he was to keep for D2; and (iii) D2 did not tell him the contents of the black Prada bag and he did not ask D2. The items found in the black Prada bag were cheque books,

two USB drives, a Seagate Hard Disk Drive ('Seagate HDD') and one memory card. The plaintiff had specifically requested for the Seagate HDD in its application for the AP order. (paras 46, 50, 51 & 54)

(2) The plaintiff's forensic investigator from VL attempted to login into D1's email but could not get into D1's email as a 6-digit pin from D2's phone number was required as a two-step authentication for access to D1's email. D6 then contacted D2 for the 6-digit pin and after D2 gave the 6-digit pin, the representative from VL was able to access D1's email. Based on their analysis of D1's email 'Security Checkup', VL noted that three key activities/changes were made to D1's email on the first day of the execution of the AP order. The key activities/changes were 'Change password', 'Change recovery email' and 'Change recovery phone'. (paras 70 & 81)

(3) VL had checked all the undisputed PC's secured during the execution of the AP order. They noted that there were no browsing entries on D1's email account. From the lack of emails on D1's email account and from the missing emails from D1's email account, VL concluded that these said emails had been deleted. When the plaintiff's execution team finally obtained access to D1's email account, there were only 30 emails on D1's email account. Previously, when VL had forensically imaged the desktop computer that D2 had used when he was employed at the plaintiff ('previous emails'), there were 1,102 emails in D1's email account. However, when they accessed D1's email later, VL were unable to find these previous emails. Therefore, from the missing previous emails and the lack of emails on D1's email account, VL concluded that at least 1,000 emails had been deleted from D1's email account. (paras 85 & 86)

(4) The car, a Proton X70, was one of D2's cars listed in Sch. A of the AP order, which could be searched by the plaintiff under the AP order. During the execution of the AP order, when asked about the whereabouts of the Proton X70, D2 said he had no knowledge of the said car. However, it was subsequently identified from a hire-purchase agreement dated 4 February 2019 for the Proton X70, that the said car was registered under D2's name. (paras 96 & 97)

(5) D2 had admitted that he did not handover his handphones. D2 was asked to release the two handphones in his possession for imaging, pursuant to the AP order. D2 refused to release them and when told of the risks involved if he chose not to comply with the terms of the AP order, D2 replied that he was ready to accept those risks. (paras 105 & 106)

(6) For all the above reasons, the plaintiff had proved beyond reasonable doubt that D2 had wilfully and/or intentionally breached the AP order and had committed the wrongful acts 1(i), 2(i), 3(i), 4(i) and 5. (para 108)

(7) D6 and Syaza's testimonies during the committal hearing showed that they both had manually deleted documents from their computers and Syaza had manually downloaded documents from her computer onto a thumb drive and had removed the thumb drive out of D1's office before the plaintiff's team was allowed access into the office. Accordingly, D6 had deliberately breached the AP order and had committed the wrongful acts 1(ii) and 2(ii). Syaza had also deliberately breached the AP order and had committed the wrongful acts 1(ii), 2(ii), 3(ii) and 4(ii). As for Atiqah, the court believed her testimony that she did not deliberately delete the documents from her computer but the documents were being deleted remotely. Atiqah was not guilty of contempt of court. (paras 118-121)

(8) None of the contemnors (D2, D6 and Syaza) showed any genuine remorse or repentance in tendering their apologies to this court. From his demeanour, not only did D2 not show any genuine remorse but he appeared to be amused when he was tendering his apology to this court. The contemnors had not purged their contempt. To date, none of them had provided to the plaintiff any of the documents and emails that had been deleted, hidden and/or removed from the computers in D1's office. The contemnors deletion and/or removal of the documents had deprived the plaintiff of their right to adduce at the trial of this suit the contents of the deleted documents and emails in support of their action against the defendants. The contemnors' actions were calculated to obstruct or interfere with the due course of justice or the lawful process of the courts. (paras 131, 136 & 152)

Case(s) referred to:

Attorney General v. Times Newspaper Ltd [1974] AC 273 ***(refd)***
Jasa Keramat Sdn Bhd v. Monotech (M) Sdn Bhd [2001] 4 CLJ 549 CA ***(refd)***
JSC BTA Bank v. Solodchenko & Ors [2010] EWHC 2843 (Ch) ***(refd)***
Juris Technologies Sdn Bhd & Anor v. Foo Tiang Sin & Ors [2019] 9 CLJ 617 HC ***(dist)***
PCP Construction Sdn Bhd v. Leap Modulation Sdn Bhd; Asian International Arbitration Centre (Intervener) [2019] 6 CLJ 1 FC ***(refd)***
Peguam Negara Malaysia v. MKini Dotcom Sdn Bhd & Anor [2021] 3 CLJ 603 FC ***(refd)***
Q & M Dental Group (Singapore) Ltd & Ors v. Dr Hong An Liang & Ors [2019] 1 LNS 1286 HC ***(foll)***
R v. Gray [1900] 2 QB 36 ***(refd)***
Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors [2012] 2 CLJ 849 FC ***(refd)***
Teoh Seow Chiew v. Mega Palm Sdn Bhd & Anor [2021] 1 LNS 2400 HC ***(refd)***
TO Thomas v. Asia Fishing Industry Pte Ltd [1977] 1 LNS 126 FC ***(refd)***
Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal [1993] 3 CLJ 210 SC ***(refd)***

Legislation referred to:
Rules of Court 2012, O. 52 rr. 1, 3, 4

For the plaintiff - Ling Hua Keong, Audrey Chong Pei Ying & Eolanda Yeo Jin; M/s Ling & Mok
For the 2nd, 5th, 6th & 7th defendants - Harpal Singh Grewal, Ivanpal Singh Grewal & Pang Li Wei; M/s AJ Ariffin Yeo & Harpal
For the 1st, 3rd & 4th defendants - Rudeen Chua Kim Hong; M/s Rudeen Chua & Co

Reported by Lina E

JUDGMENT
(Encls. 98 and 99)

Faizah Jamaludin J:

Introduction

[1] The applications in encls. 98 and 99 are the plaintiff's applications for committal against the second defendant ("D2"), the sixth defendant ("D6") and two of the first defendant's employees, namely, Nur Syaza Ayuni bt Abdul Shukor ("Syaza") and Nur Atiqah binti Ahmad ("Atiqah") for contempt of court by reason of their alleged breach of an *ex parte Anton Piller* Order granted by this court on 7 August 2019 (the "AP Order"). The applications are made under O. 52 r. 4 of the Rules of Court 2012 ("ROC").

[2] The proposed contemnors in their affidavits and written submissions had strenuously opposed the plaintiff's applications. They denied that they had defied and/or breached the AP Order. But on the morning of the hearing of the committal applications on 30 May 2022, learned counsel for the proposed contemnors, Dato' Harpal Singh Grewal, informed this court that he had advised the proposed contemnors to tender their apologies to this court. The proposed contemnors proceeded to tender their apologies to this court prior to the commencement of the hearing.

[3] The apologies tendered were, however, not unreserved: they were reserved on the proposed contemnors' written submissions that were filed prior to the hearing date. The proposed contemnors neither pleaded guilty nor admitted to having defied and/or disobeyed the AP Order.

[4] In addition, none of the proposed contemnors had purged their contempt prior to or after tendering their apologies to court. They have to date not delivered up the documents that had been deleted, removed and/or hidden in breach of the AP Order. Their counsel submitted that it was not necessary for the proposed contemnors to purge their contempt by delivering up the documents which they had deleted, removed and/or hidden, because the plaintiff had filed an application for discovery (encl. 112) for some of the documents that were not delivered up during the execution of the AP Order.

[5] Given that the proposed contemnors continued to maintain that they had not breached the AP Order and none of them had pleaded guilty to having defied and/or disobeyed the AP Order, this court proceeded to determine whether based on the available evidence the plaintiff had proven beyond reasonable doubt that each of the proposed contemnors had committed the alleged wrongful acts.

[6] For the reasons stated in this judgment, this court had found that the plaintiff had proved beyond reasonable doubt that D2, D6 and Syaza (collectively referred to in the rest of this judgment as "the contemnors") had committed the wrongful acts detailed in the plaintiff's O. 52 statement (as defined below) and are, accordingly, guilty of contempt of court. As for Atiqah, this court did not find her to be in contempt of court.

[7] During the hearing, Dato' Harpal had moved this court to sentence the contemnors with a strong reprimand and a fine for their contempt of court instead of a committal order, by reason of the contemnors' apologies.

[8] However, due to the seriousness of their defiance and/or breach of the AP Order, the prejudice suffered by the plaintiff as a result of the contempt, the degree of each contemnor's culpability, the contemnors continued denial of any breach of the AP Order, and their continued refusal to purge their contempt by delivering up the documents, this court sentenced D2 to fifteen days imprisonment, D6 to five days imprisonment and Syaza to three days imprisonment.

[9] Upon Dato' Harpal's oral application, this court granted a stay of execution of the imprisonment sentence pending the disposal of the contemnors' appeal against the sentence. The stay was granted subject to the condition that a surety for each of the contemnors provide a bond sum to the court to ensure their presence at the hearing and disposal of their appeal.

[10] I had given my key grounds for the committal order when delivering the said order against each of the contemnors. The full reasons for my decision are detailed in this judgment.

Key Background Facts

[11] The plaintiff is a company incorporated in November 2002. It has since February 2003 been involved in the business of supply, installation, testing, commissioning and maintenance of elevators and escalators.

[12] The first defendant ("D1") is a company that was incorporated in July 2018. It is also in the business of elevators and escalators. It is plaintiff's case that since its incorporation, many of the plaintiff's businesses and clients had been unlawfully siphoned to D1 to the detriment of the plaintiff.

[13] D2 was the plaintiff's first employee when it was set up in November 2002. He rose to the become its Chief Operating Officer ("COO"). It is the plaintiff's case that D2 had set up D1 while still in the employ of the plaintiff as its COO, and that he is a shadow director and the owner of D1.

[14] D5 was the plaintiff's Project Manager and D6 was the plaintiff's Service Manager. The seventh defendant ("D7") was the plaintiff's Testing Engineer. D2, D5, D6 and D7 had left the plaintiff in 2019 to join D1. At the time of the execution of the AP Order, they were in the employ of D1.

[15] The fourth defendant ("D4") is D2's driver. The third defendant ("D3") is the sole proprietor of YK Elevator Services – the plaintiff's subcontractor for the northern region of Malaysia. Both D3 and D4 are directors and shareholders of D1. D4 holds 80% and D3 holds 20% of the shares in D1.

[16] After D2, D5, D6 and D7's resignation, the plaintiff had engaged forensic investigator, Virdos Lima Consultancy (M) Sdn Bhd ("VL") to conduct an independent forensic analysis and to investigate the electronic stored information ("ESI") extracted from the desktop computers at the plaintiff used by D2, D5, D6 and another employee named Mariama binti Abdul Shukor ("Mariama"). VL had reported their findings in an interim report dated 5 June 2019 (the "first report").

[17] In their first report, VL reported that they had found, among others, that D2 had set-up D1 while he was still employed as the plaintiff's COO. VL further reported that their initial forensic investigation also discovered that the plaintiff's confidential information had been used for the benefit of D1.

[18] The plaintiff filed this action against the defendants on 17 July 2019 for conflict of interests, breach of fiduciary duties, breach of trust, misuse of confidential information, knowing assistance and conspiracy of unlawful means.

[19] The plaintiff contends that D2, D5, D6 and D7 were in possession of its confidential information consisting of but not limited to the plaintiff's sub-contractors, suppliers, customers, employees, costing list, pricing list/ strategies, business plans/leads, marketing and sales information, customer confidential information, profit margins and sales projections, customer service and repair records, list of all new projects tendered by the plaintiff and its templates for costing, quotations and contracts.

[20] In its statement of claim, the plaintiff pleads that D2, D5, D6 and D7 have an undisclosed conflict of interest and had breached the plaintiff's confidential information through their involvement in the operations and business of D1, while still in the gainful employment of the plaintiff. Also, that they had breached their fiduciary duties and trust to the plaintiff by diverting business and opportunities to D1, while in the plaintiff's employ.

[21] As against D3 and D4, the plaintiff pleads that they had acted dishonestly in assisting D2 and D5's breaches of fiduciary duties and breaches of trust. With regards to D6, the plaintiff pleads that D6 was aware of D2 and D5's involvement in D1, and she had assisted them to prepare documentation for D1 and had assisted with D1's operations whilst in the plaintiff's employment.

The Anton Piller Order

[22] On the same day as filing the writ of summons and the statement of claim in this suit, the plaintiff filed an *ex parte* application for an *Anton Piller* Order. The AP Order was granted by Che Mohd Ruzima bin Ghazali J (now JCA) on 7 August 2019.

[23] The AP Order, *inter alia*, compelled the defendants to allow the plaintiff's agents and representatives entry into D1's office, and D2's and D5's residences and cars, for them to forensically image devices containing the documents and information listed in AP Order and to deliver up to the plaintiff's supervising solicitor the documents and information that are in their custody, care and/or control. The defendants were injuncted from hiding, concealing, amending, changing, damaging, manipulating, disturbing and/or destroying any or all of the documents and/or information.

[24] The cars used by and/or registered to D2 are listed in Sch. A of the AP Order. They consist of a (i) Land Rover Range Rover Sport registration no. VDJ 6; (ii) Proton X70 1.8 TGDI Executive registration no. VCT 9336; (iii) Honda Accord 2.4 L I-VTEC (A) registration no. WRE 16; (iv) Toyota Vellfire registration no. VD 16; and (v) Golf GTI 2.0 registration no. BKY 16 (collectively referred to as "D2's cars"). The cars registered to D5's name listed in Sch. A of the AP order consists of a (i) Honda Accord 2.4 2.4 L I-VTEC (A) registration no. WPJ 989; (ii) Proton Saga 1.3 (A) registration no. JLP 2298; (iii) Honda Civic 1.5 TC-P registration no. QM 89 D; and (iv) Volkswagen Passat 1.8 (A) registration no. 3298 (collectively referred to as "D5's cars").

[25] The documents and/or information to be delivered up by the defendants are listed in Sch. B of the AP Order. They are reproduced below:

Schedule B

1. All documents (including but not limited to company records, bank statement, bank books, ledgers, invoices, receipts, purchase orders, delivery orders, cheque books, applications, cheque stubs, tender documents, price lists, proposals, correspondences including emails, texts, letters, *etc*, containing information about or relating to

   (i) the sales and/or purchases conducted by the 1st Defendant, payments and/or receipt of monies from August 2018 up to date, and

(ii) the contracts obtained by the 1st Defendant from August 2018 up to date.

2. The 1st Defendant's employee registry and records.

3. All the 1st Defendant's licenses and approvals, and all the necessary application, documentation, claims, forms, correspondences including emails, texts, letters *etc*, in relation to the obtaining of such licenses and approvals.

4. The 1st Defendant's customer listing or documents capable to provide the names of the 1st Defendant's customers.

5. Full contents of "Seagate Backup Plus Drive" with the serial number F4903663.

6. Full contents of "Generic Flash Disk USB Device" with the serial number 2D67B094.

7. Full contents of any portable storage devices and/or hard drives which contain any information listed at paragraphs 1 to 4 of this Schedule B.

Legal Principles On Contempt Of Court

[26] Rohana Yusuf PCA in the Federal Court's majority judgment in *Peguam Negara Malaysia v. MKini Dotcom Sdn Bhd & Anor* [2021] 3 CLJ 603; [2021] 3 AMR 268 explained that a court's power to punish contempt of itself flows its *raison d'etre ie*, the reason for a court's existence, which is to uphold the administration of justice. Her Ladyship held:

> [14] … Power to punish for contempt flows from "*raison d'etre*" for a court of law to uphold the administration of justice. All courts are empowered to punish for contempt committed when the courts are in session. The superior courts are empowered to punish any contempt of itself as provided in art. 126 of the Federal Constitution read with s. 13 of the Courts of Judicature Act 1964. Article 126 of the Federal Constitution provides specifically for the power to punish for contempt when it states:
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> Power to punish for contempt
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> 126. The Federal Court, the Court of Appeal or a High Court shall have power to punish any contempt of itself.
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> [15] As Malaysia does not have any specific legislation to regulate on contempt of court, regard has to be made to the English common law principle by virtue of s. 3 of the Civil Law Act 1956. It was elucidated in *R v. Gray* [1900] 2 QB 36, the term "contempt of court" has always been referred to as:
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> *… Any act done or writing published calculated to bring a court or a judge of the court into contempt, or to lower his authority, is a contempt of court. That is one case of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful*

process of the courts is a contempt of court. The former class belongs to the category which Lord Hardwicke L.C. characterised as scandalising a court or a judge.

[16] Further, Lord Diplock in *Attorney General v. Times Newspaper Ltd* [1974] AC 273 has observed that:

> … "Contempt of court" is a generic term descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes. Contempt of court may thus take many forms. (emphasis added)

[27] In essence, the law of contempt is to preserve the orderly and effective administration of justice and to protect the public confidence in the judiciary: see *PCP Construction Sdn Bhd v. Leap Modulation Sdn Bhd; Asian International Arbitration Centre (Intervener)* [2019] 6 CLJ 1; [2019] 4 MLJ 747; [2020] 1 AMR 157, FC.

[28] The courts have consistently held that the categories of contempt and the facts and circumstances which may give rise to contempt are never closed. In *Jasa Keramat Sdn Bhd v. Monotech (M) Sdn Bhd* [2001] 4 CLJ 549; [2001] 4 AMR 4241; [2001] 4 MLJ 577, CA, Abdul Hamid Mohammad JCA (later CJ) at p. 571 held:

> Whether an act amounts to an interference with the due administration of justice or the course of justice and therefore contempt, or not, depends on the circumstances of each case. The act, as stated by Lloyd LJ in *Attorney-General v. Newspaper Publishing PLC* [1988] 1 Ch. 33 (CA) must be sufficiently serious and sufficiently closely connected with the particular proceedings. *The court will have to consider whether the act is done in good faith, in the ordinary course of business or whether it is one with a view to frustrate the proceedings thus rendering any subsequent order of court ineffective and fruitless.* (emphasis added)

[29] It is settled law that a committal application for contempt of court is akin to a criminal charge. The Federal Court in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849; [2012] 3 MLJ 458; [2012] 2 AMR 429, held that the alleged act of contempt must be "adequately described and particularised in detail" in the statement drawn up by the applicant under O. 52 r. 3 of the ROC ("O. 52 statement"). The applicant for a committal order has the legal burden to prove beyond reasonable doubt that the proposed contemnors had committed the alleged act of contempt: see the majority judgment of the Supreme Court in *Wee Choo Keong v. MBF Holdings Bhd & Anor and another appeal* [1995] 3 MLJ 549; [1993] 3 CLJ 210.

[30] Although contempt action is a quasi-criminal process, it is trite that *mens rea* of the contemnors is not an ingredient that must be proved in contempt proceedings. The Court of Appeal in *Jasa Keramat Sdn Bhd v. Monotech (M) Sdn Bhd* (*supra*), per Abdul Hamid Mohammad JCA (later CJ) at para. 569 g to h, 570 b to c, held:

> The short answer is that mens rea is not an ingredient to be proved in contempt proceedings. In *Re A.G's Application, A.G. v. Butterworth* [1963] 1 QB 696, Donovan LJ said:
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> > I conceive the position, however, to be this. *Reg v. Odhams Press Ltd. Ex parte A.G.* ([1956] 3 All ER 494) makes it clear that an intention to interfere with the proper administration of justice is not an essential ingredient of the offence of contempt of court. It is enough that the action complained of is inherently likely to interfere.
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> This passage was quoted with approval in *T.O. Thomas v. Asia Fishing Industry Pte Ltd* [1977] 1 LNS 126; [1977] 1 MLJ 155 FC. See also *Chandra Sri Ram v. Murray Hiebert* [1997] 3 CLJ Supp 518 and the cases referred therein.

[31] Therefore, in deciding whether a proposed contemnor had disobeyed an order of court, the question for determination is whether the proposed contemnor had by his/her action or omission had intentionally defied and/or disobeyed the court order. It is immaterial what the proposed contemnor's intention was in disobeying the court order. As Lee Hun Hoe (Borneo) CJ held delivering the judgment of the Federal Court's judgment in *TO Thomas v. Asia Fishing Industry Pte Ltd* [1977] 1 LNS 126, FC, "intention is of no consequence in the matter of contempt by disobedience to a court order."

Application For Committal

[32] The plaintiff claims that D2, D6, Syaza and Atiqah are in contempt of court for having deliberately defied and/or disobeyed the AP Order by hiding and/or concealing evidence and by hiding, destroying and/or deleting emails, documents and evidence.

[33] On the plaintiff's application under O. 52 r. 1 of the ROC, this court had on 2 October 2020 granted the leave order for the plaintiff to file applications for committal against the proposed contemnors for contempt of court for having wilfully and/or contumeliously defied and/or disobeyed the AP Order. Pursuant to the leave order, the plaintiff on 6 October 2020 applied (in encls. 98 and 99) for orders of committal against the contemnors for their alleged defiance and/or disobedience of the AP Order.

[34] The proposed contemnors sought to set aside the leave order in encl. 106. In their affidavits and submissions filed in relation to the setting aside application in encl. 106, and in opposing the committal applications in encl. 98 and encl. 99, the defendants had vehemently denied that they had breached the AP Order.

[35] The proposed contemnors' application to set aside the leave order in encl. 106 was heard on 8 October 2021. At the conclusion of the hearing of encl. 106, this court dismissed the application. The proposed contemnors did not appeal against the dismissal.

[36] The defendants had filed an application to strike-out the AP Order in encl. 153. As at the date of the hearing of the plaintiff's committal applications, the defendant's application to strike out the AP Order in encl. 153 had not been heard.

Alleged Breaches Of The AP Order By D2

[37] In its O. 52 statement supporting the leave application for committal against D2, the plaintiff stated that D2 had wilfully and/or contumeliously defied and/or disobeyed the AP Order by having committed the following wrongful acts on the day that the plaintiff's solicitors, agents/representatives and the supervising solicitors came to execute the AP Order at D2's residence on 13 August 2019:

Wrongful Act 1:	D2 had hidden and/or concealed evidence by handing over a bag containing cheque book, documents, external hard disk, two portable data drives and 1 micro SD card to a third party for safekeeping.
Wrongful Act 2:	D2 had concealed his knowledge of the password of D1's email address mxc.elevator@gmail.com and/or lied about his knowledge of the password to the said email address in order to stall the handover of the said email address.
Wrongful Act 3:	By stalling the handover of the email address mxc.elevator@gmail.com to the supervising solicitor, D2 caused the deletion of the emails from mxc.elevator@gmail.com
Wrongful Act 4:	D2 concealed his knowledge and/or whereabouts of one of his cars – the Proton X70 1.8 TGDI Executive registration no. VCT 9336 by deception. He informed the supervising solicitors that he had no knowledge of the car
Wrongful Act 5:	D2 refused to hand over his two handphones to the plaintiff's representatives or the supervising solicitors for forensic imaging despite various requests to do so

[38] The plaintiff contends that these wrongful acts happened after D2 was personally served with the AP Order and had been informed of the contents of the AP Order.

[39] D2 in para. 11 of his affidavit affirmed on 20 November 2020 (encl. 110) expressly denied that he had committed any of the wrongful acts. He said that the plaintiff's allegations "are baseless and part of an elaborate scheme devised by the plaintiff that traduces the other defendants and me". In para. 9.3 of his affidavit, D2 stated "I reserve my rights to challenge the execution of the AP Order because it was done in bad faith and without adhering to the procedural safeguards follow the execution of such an order."

[40] Messrs. Vinu & Lopez had been appointed as the supervising solicitors to oversee the process of execution of the AP Order at the location on 13 and 14 August 2019. Vinu Kamalanathan ("VK") of Messrs. Vinu & Lopez, oversaw the execution of the AP Order at D2's residence and D2's cars. VK's report as regards the execution of the AP Order on 13 August 2019 and 14 August 2019 ("VK's report") is shown as "exh. VK1" in an affidavit affirmed by VK on 27 August 2019 (encl. 28).

(i) Alleged Wrongful Act 1

[41] The plaintiff's case is that after the supervising solicitor had served the AP Order on D2 and had explained to him the terms of the AP Order, D2 acted to conceal and/or hide the evidence by handing over a bag containing cheque books, documents, external hard disk, two portable data drives and 1 micro SD card to a third party for safekeeping the items. D2 had passed the bag and items to his neighbour, Jeremie Soo.

[42] It is stated in VK's report that the plaintiff's agents/representatives, its solicitors, and the supervising solicitors went to D2's residence on 13 August 2019 at 9.06am. Khong Heng Jun ("KHJ") of VL consultancy, was also present during the execution of the AP Order at D2's residence. KHJ was responsible for the forensic copying/imaging computer and devices at D2's residence.

[43] At D2's residence, they were met by D2's father-in-law, who confirmed that D2 was living there but that he was not at home. VK explained the contents and the consequences of the AP Order to D2's father-in-law and suggested that he call D2 to return home.

[44] At 9.26am, D2 returned to his residence in his Range Rover Sport car registration no. VDJ 6. VK explained the contents of the AP Order to D2. After advising D2 that he will be given reasonable time to secure legal advice on the matter, VK served the cause papers on D2.

[45] At 9.32am, D2 left with all the cause papers and sat in his car.

[46] At 10.13am, D2 left his residence in his car. The plaintiff's agents who were waiting at the guardhouse of D2's residence saw D2 passing a black bag to a Peugeot car with a vehicle registration no. BHJ 1000.

[47] At 10.45am, D2 returns home and invites VK together with the plaintiff's solicitors and agents/representatives into D2's residence. VK then enquires the whereabouts of all of D2's cars. D2 informed VK that he had no knowledge of the Proton X70 1.8 TGDI Executive registration no. VCT 9336.

[48] At 11.30am, D2's neighbour, Jeremie Soo – the person who was earlier seen driving the Peugeot registration no. BHJ 1000 and to whom D2 had passed the black bag to – comes to the front gate and enters D2's residence.

[49] Jeremie Soo informed VK and the plaintiff's solicitor Eolando Yeo ("EY") that D2 had called him and asked him to meet him outside the guard house of D2's residence area, where D2 then asked him to keep a bag for him. Jeremie told VK and EY that he did not want to get involved in any dispute and handed over a black Prada branded bag to EY in the presence of VK.

[50] The items found in the Prada Bag were cheque books, two USB drives, a Seagate Hard Disk Drive ("Seagate HDD") and a micro SD memory card.

[51] The plaintiff had specifically requested for the Seagate HDD in its application for the AP Order. This was because VL's forensic investigation of D2's desktop computer showed that D2 had stored most of D1's folders and files in the Seagate HDD. This court had allowed the plaintiff's application for the inclusion of the Seagate HDD in the AP Order – it was listed as one of the devices in Sch. B of the AP Order that defendants were ordered to deliver up the full contents of: see item 5 of Sch. B of AP Order reproduced in para. [25] above.

[52] It is not disputed that after VK had served the AP Order on D2 and explained the terms of the order to him. D2 admits that he had obtained legal advice after being served with the AP Order and the terms of the AP Order notified to him. In fact, D2 had stated in his affidavit that his solicitors had advised him to comply with the terms of the AP Order.

[53] D2 claimed that upon driving back to his residence after speaking to his solicitor, "he chanced upon" his neighbour Jeremie Soo and passed him the black Prada bag.

[54] However, Jeremie Soo denied D2's claim that he "chanced upon" him on the morning of the execution of AP Order. In his affidavit affirmed on 3 December 2020 (encl. 115), Jeremie Soo confirmed that he was the person who was driving the Peugeot car (registration no. BHJ 1000) that was seen receiving the black Prada bag from D2. Instead of being "chanced upon" by D2 as claimed by D2, Jeremie Soo averred that sometime in the morning of 13 August 2019, D2 had contacted him on his handphone and asked Jeremie to meet him at the shop lots outside the residential area. Jeremie said that

he then met D2 outside the residential area and that D2 passed him the black Prada bag which he was to keep for D2. Jeremie said that D2 did not tell him the contents of the black Prada bag and he did not ask D2.

[55] D2 did not deny Jeremie Soo's averment that D2 had called him on the morning of 13 September 2019 to meet him outside the residential area. And D2 did not deny that after he had been served with the AP Order and the terms of the AP Order notified to him, he had driven off in his car and had passed Jeremie Soo the black Prada bag containing the said items for safekeeping. D2 also did not deny that the black Prada bag which contained the cheque books, two USB drives, the Seagate HDD and a micro SD memory card was passed to Jeremie Soo for safekeeping.

[56] However, D2 claims in his affidavit in reply affirmed on 20 November 2020 (encl. 110) that he did not know that the Seagate HDD was specifically identified in the AP Order and that when he handed over the black Prada bag to Jeremie Soo he was not aware of the nature and contents of the AP Order.

[57] The Seagate HDD was expressly listed in item 5 of Sch. B of the AP Order. I find it highly improbable that D2 did not know that the Seagate HDD was specifically listed in the AP Order. This is especially so since D2 had obtained independent advice from his lawyers on the AP Order and his lawyers had advised him to comply with the AP Order.

[58] Moreover, even if the Seagate HDD was not expressly listed in Sch. B of the AP Order, the wordings in items 1 to 4 of the Sch. B of the AP Order are wide enough to cover the contents in the Seagate HDD, the two USB drives, and a micro SD memory card, as well as the cheque books, that D2 had passed to Jeremie Soo for safekeeping.

[59] Accordingly, for the above reasons, I find that D2 has deliberately committed Wrongful Act 1 in breach of the AP Order.

(ii) Alleged Wrongful Act 2 And Wrongful Act 3

[60] The plaintiff states that D2 had concealed his knowledge of the password to D1's email *ie*, the email address mxc.elevator@gmail.com ("D1's email") and/or lied about his knowledge of the password to D1's email in order to stall the handover of access to D1's email by the plaintiff's team during the execution of the AP Order. The plaintiff contends that by stalling the handover of D1's email to the supervising solicitor, D2 had caused the deletion of the emails from D1's email account.

[61] In VK's report, it is stated that at around 12.26pm on 13 August 2019 during the execution of the AP Order at D2's residence, the plaintiff's solicitor, EY, had asked D2 for access to D1's email. D2 told EY that the password to D1's email was at D1's office.

[62] EY then called the plaintiff's team tasked with the execution of the AP Order at D1's office about accessing D1's email. EY was informed by the plaintiff's other execution team that they were not allowed access into D1's office. EY then advised D2 to allow the plaintiff's execution team to access D1's office.

[63] At 1.55pm, EY asked D2 again for access to D1's email. D2 informed VK and EY that D3 had asked for the password to D1's email be changed. D2 told VK and EY that he was merely an employee of D1, and that he had no access to D1's email.

[64] EY informed D2 that she will call D3 for confirmation. D2 then walked up to his bedroom. EY then called D3 and asked him if he had told D2 to change the password to D1's email address. D3 denied that he had asked D2 to change the password to D1's email. D3 told EY that he does not have access to D1's email.

[65] At around the same time, KHJ of VL, informed EY that D2 has access to D1's email as VL's first report had documented emails from D1's email address that had been sent by D2. At that time D2 was still in bedroom – he had gone to his bedroom after EY told him that she was going to call D3 to confirm whether D3 had asked for the password to D1's email be changed. KHJ then went to D2's bedroom to ask D2 for clarification. D2 informed KHJ that he was in the washroom.

[66] At 2.02pm KHJ discovers that D1's email was in fact contained in D2's Apple MacBook Pro but the password was locked.

[67] At 2.24pm, EY enquires with D2 about D1's email. D2 told EY that he was still in the washroom.

[68] At 2.28pm, D2 returns and informed EY that D6 had control over D1's email.

[69] At 2.30pm, Conrad Francis Lopez ("CFL"), the solicitor from Messrs, Vinu & Lopez, who oversaw the execution of the AP Order at D1's office, obtained the password to D1's email from D6.

[70] At 3.56 pm, the plaintiff's forensic investigator from VL attempted to login into D1's email. However, he could not get into D1's email as a six-digit PIN from D2's phone number was required as a two-step authentication for access to D1's email. D6 then contacts D2 for the six-digit PIN. After D2 gave the six-digit PIN, the representative from VL Consultancy was able to access D1's email.

[71] VL had forensically imaged various devices during the execution of the AP Order. The devices were processed by VL pursuant to the terms of the AP Order, a consent order dated 12 September 2019 ("consent order") and an order dated 1 June 2020 ("order").

[72] VL had prepared a report dated 9 March 2020 (the "second report") pursuant to their review of the data extracted from the forensically imaged devices that were undisputed and released to the plaintiff upon the completion of the execution of the AP Order ("undisputed devices"). The second report was exhibited as exh. "C4" in the plaintiff's affidavit in support of its application for the leave for committal (encl. 85) affirmed by Yeow Tow Guan on 28 September 2020.

[73] Among the devices that were forensically imaged by VL Consultancy included the Dell desktop computer and the Apple MacBook Pro that were used by D2. Based on their forensic imaging of these devices, VL found that D2 had full control and knowledge over D1's email account. The basis for VL's finding is stated in their second report.

[74] VL found that D2 had accessed D1's email account 56 times from his Dell PC between 15 November 2019 and 31 July 2019, and that he had accessed D1's email account 279 times from his Apple MacBook Pro between 1 September 2018 and 14 July 2019.

[75] VL Consultancy also found that D2's Apple MacBook Pro had registered D2's access to D1's email as one of 12 "Top Sites" browsed.

[76] Besides D2's browsing history, VL noted that during the execution of the AP Order at D2's residence, one of the recent webpages D2 had visited was D1's email account but the account was password locked. VL stated that upon their login into D1's email account using the password provided by D6, they noted that D1's email was secured by a two-factor authentication PIN that was sent to D2's handphone. VL said that after they had asked for the PIN code from D2 they were able to access D1's email. At para. 4.6.8 of their second report, VL states:

> The need for a two-factor authentication PIN Code that was sent to Michael's [D2] mobile device further indicates that *Michael [D2] has full control of the MXC Gmail account [D1's email account] and his representation that he does not have access to the MXC Gmail is unfounded.* Moreover, the two factor authentication PIN code is required before any Gmail user can change their Gmail account password. (emphasis added)

[77] Further, VL found that upon checking D1's email "Personal Info" the password to the D1's email was changed during the execution of AP Order on 13 August 2019.

[78] VL also found that there were on 30 emails stored on D1's email account as of 13 August 2019 – the emails were only for two days *ie*, 30 July 2019 and 1 August 2019. However, based on VL's initial investigation of D2 and D5's computers (see their first report), VL had found that the first email from D1's email account was sent on 25 August 2018.

[79] Also, VL's analysis of D2' Dell PC and his Apple MacBook Pro shows that D2 had been frequently accessing D1's email account as early as September and October 2018.

[80] Based on the exported data of D1's email, VL noted that several keyword searches that were performed from 3 December 2018 and 8 May 2019. The keyword searches included, but not limited to, various project names, as well as individual names/email addresses such as "shima", "ppa1m setapak", "yklow", "e.j.chew@gmail.com" and "intentec". VL tried to replicate the emails, but they were not able to find the emails within the period such searches were made. VL also mapped emails found on D2's Dell PC, potential emails from D2's web browsing histories from D2's Dell PC and his Apple MacBook Pro, as well as the emails they had found when they had found on D2 and D5's emails when they had conducted their initial investigation in June 2019 of the computers that D2 and D5 had used when they were employed by plaintiff (see VL's first report). However, they were not able to find any of these earlier emails when they accessed D1's email account on 14 August 2019.

[81] Based on their analysis of D1's email "Security Checkup", VL noted that three key activities/changes that were made to D1's email on 13 August 2019 *ie*, the first day of the execution of the AP Order. The key activities changes were: (i) "Change password"; (ii) "Change recovery email"; (iii) "Change recovery phone":

(i) Change password: VL found that the password to D1's email was changed on 13 August 2019.

(ii) Change recovery email: VL found that at the time they checked the email on 14 August 2019, the "recovery email" of D1's email had been changed to D3's email address at "yklow59@gmail.com".

(iii) Change recovery phone": VL found that the "recovery phone" had been changed from D2's phone number to a new phone number +60125265087. VL Consultancy were unable to identify the owner of this phone number.

[82] VL stated in para. 4.7.16 of their second report:

> We also noted that the changes highlighted in the paragraph above happened after the "New sign-in on Apple iPhone" as well as a "New sign-in on Windows". A the "New sign-in on Windows" was last recorded before the changes were made, it would mean that an individual was (1) using a Windows device; (2) have the knowledge of the MXC Gmail (D1's email) account password; and (3) have the knowledge that Michael's (D2's) mobile number was the two-factor authentication device before successfully logging into the MXC Gmail (D1's email) and then made the abovementioned changes.

[83] All these changes to D1's email took place while D2 was in the bedroom/washroom of his house. As reported in VK's report, D2 had gone to his bedroom at approximately 12.26pm after EY told him she was going to call D3 to verify D2's claim to her that D3 had asked him to change password to the D1 email account.

[84] D2 had stayed in the washroom for more than two hours – from approximately 12.26pm until 14.28pm – during which time he had both his mobile phones with him, one of which is an Apple iPhone to which Google had sent the two-factor authentication PIN Code for D1's email. D2 had refused to hand over both mobile phones to the supervising solicitor for imaging. VL's analysis of the D1's email "recently used devices" found that an Apple iPhone had last accessed the D1 email on 13 August 2019 at approximately 13.35pm to remove "account access", which was during the two hours duration that D2 was in the washroom.

[85] VL said that they had checked all the undisputed PCs secured during the execution of the AP Order. They noted that there were no browsing entries on D1's email account on 13 August 2019. From the lack of emails on D1's email account and from the missing emails from the D1's email account, VL concluded that these said emails had been deleted.

[86] When the plaintiff's execution team finally obtained access to D1's email account on 13 August 2019, there were only 30 emails on D1's email account. Previously on 17 April 2019, when VL had forensically imaged the desktop computer that D2 had used when he was employed at the plaintiff ("the previous emails") there were 1102 emails in D1's email account. However, when they accessed D1's email on 13 August 2019, VL were unable to find these previous emails. There were also no emails on D1's email account for the period from 25 August 2018 to 29 July 2019. Therefore, from the missing previous emails and the lack of emails on D1's email account, VL concluded that at least 1000 emails had been deleted from the D1's email account.

[87] In his affidavit (encl. 110), D2 averred in para. 12.10 that he "could not remember the password for the said email account at that particular time". However, he did not deny that he told EY that the password for D1's email was at D1's office and that he had told EY that D3 had asked him to change password the said email, of which D3 denied.

[88] D2 denied that he stalled the handover of the password to D1's email account. He said at para. 17.5 of his affidavit that after the password was obtained from his office, he disclosed the six-digit one-time PIN to VK and his team because it "was his intention to comply with the AP Order". D2 also denied that he covertly accessed D1's email account between the time he was asked access to the email account and the time plaintiff's representatives finally obtained access to D1's email account.

[89] The facts show that the two-factor authentication PIN Code for D1's email was sent by Google to D2's Apple iPhone number. It is not disputed that D2 had his Apple iPhone with him during the two hours he was in his bedroom/washroom. The forensic investigators found that during the said two hours, the password, the recovery email, and the recovery phone to D1's email were changed. D1's email was accessed from an Apple iPhone. As the two-factor authentication PIN Code for D1's email was sent by Google to D2's Apple iPhone number, and as D2 had the phone with him, only D2 would have been able to have made these changes.

[90] D2 had clearly told an untruth to EY when he told her that he did not have access to D1's email. The forensic imaging of his Dell PC and Apple MacBook Pro, and the PC that he had used at the plaintiff's office when he was employed as the plaintiff's COO, showed that he had access to and had used D1's email address.

[91] The evidence also showed the D2 had not told the truth when he told EY that he did not have the password to D1's email and that the password was with D3. EY had stated that when she called D3 to ask for the password, he told her that he did not have access to D1's email address and that he did not ask D2 to change the password as D2 had claimed. The facts show that the two-factor authentication PIN Code for D1's email was sent to D2's Apple iPhone number, which clearly shows that D2 not only knows the password to D1's email but is notified of any changes to the password *via* the notification to his phone.

[92] In his affidavit in reply, D2 does not deny that he had stayed in the bedroom/washroom for approximately two hours after EY had asked him for the password to D1's email. He also does not deny D3's statement to EY that he does not have access to D1's email and that he did not ask D2 to change the password to D1's email.

[93] Based on these facts, I find that D2 had deliberately lied and/or concealed his knowledge of the password to D1's email. And by reason of D2's lie and/or concealment of his knowledge of the password to D1's email, he was able to stall the plaintiff's access to the emails in D1's email account and caused and/or enabled the emails from D1's email account to be deleted prior to the plaintiff's access to said email account.

[94] For this reason, I am satisfied that the plaintiff has discharged its burden of proof that D2 had committed Wrongful Act 2 and Wrongful Act 3.

(iii) Wrongful Act 4

[95] The plaintiff's case is that D2 concealed by deception his knowledge and/or whereabouts of his Proton X70 car registration no. 9336.

[96] The Proton X70 is one of D2's cars listed in Sch. A of the AP Order, which could be searched by the plaintiff under the AP Order. During the execution of the AP Order, VK asked D2 where is the Proton X70. D2 told VK that he has no knowledge of the Proton X70.

[97] It was subsequently identified from the hire-purchase agreement dated 4 February 2019 for the Proton X70 *ie*, one of documents photocopied at D1's office during the execution of the AP Order, that the Proton X70 car registration no. 9336 was registered under D2's name.

[98] In his affidavit at encl. 110, D2 said that he had truthfully informed the plaintiff's solicitors that he did not know where the Proton X70 was because it was used by his colleague and was not in his physical control at the time of the execution of the AP Order. He went to state that "the plaintiff's recollection of what transpired during the execution of the AP Order concerning the X70 is less than candid and not an accurate recollection."

[99] VK in response to D2's claim in his affidavit as regards the Proton X70, affirmed a further affidavit on 3 December 2020 (encl. 116), where he reiterated that "the second defendant informed me that he had no knowledge of the Proton X70 1.8 TGDI Executive bearing the registration number VCT 9336".

[100] Learned counsel for the plaintiff submits that the D2 had admitted that the Proton X70 was part of the AP Order that was explained to him. Hence, D2 "had breached the terms of the AP Order in concealing his knowledge and/or the whereabouts of the vehicle, and thus hindering the search of the AP Order on the vehicle, which was listed in Schedule A of the AP Order and therefore had acted in contempt of court."

[101] Whether D2 told VK that he had no knowledge of the Proton X70 or that he did not know where the Proton X70 was, what is evident is that D2 did not inform VK during the execution of the AP Order that the Proton X70 was being used by D2's colleague. To my mind, it is reasonable to presume that if D2 had indeed informed VK that the Proton X70 was being used by his colleague, VK or the plaintiff's solicitor would have asked D2 the name and phone number of D2's colleague so that they can contact the colleague and locate the Proton X70 to execute the AP Order.

[102] For this reason, I find that the supervising solicitor's account that D2 told him that he had no knowledge of the Proton X70 is inherently more probable than D2's claim that he had told the supervising solicitor that he had no knowledge of the Proton X70 because it was being used by his colleague.

[103] Accordingly, I find that D2 had committed Wrongful Act 4.

(iv) Alleged Wrongful Act 5

[104] The plaintiff's case for Wrongful Act 5 is that D2 had refused to hand over his two handphones for forensic imaging despite various requests by the supervising solicitor to do so.

[105] In VK's report it was stated that at 12.48am on 13 August 2019, VK had asked D2 in front of EY to release the two handphones in D2's possession for imaging pursuant to the AP Order. D2 refused to release the handphones. VK then told D2 of the risks involved if he chooses not to comply with the terms of the AP Order, to which D2 replied that he was ready to accept those risks.

[106] D2 had admitted that he did not handover his handphones to VK.

[107] Accordingly, I find that D2 had committed Wrongful Act 5.

Findings: Did D2 Commit Wrongful Acts 1, 2, 3, 4 And/Or 5?

[108] For all the above reasons, I find that the plaintiff has proved beyond reasonable doubt that D2 had wilfully and/or intentionally breached the AP Order and had committed the Wrongful Acts 1, 2, 3, 4 and 5.

Alleged Breaches Of The AP Order By D6, Syaza And Atiqah

[109] In its O. 52 statement supporting the leave application for committal against D6, Syaza and Atiqah, the plaintiff stated that D6, Syaza and Atiqah had committed the following wrongful acts after D1's employees were informed of the contents of the AP Order and before the plaintiff's team was given access into D1's office to execute the AP Order:

Wrongful Act 1:	D6, Syaza and Atiqah had deleted files from their respective desktop computers.
Wrongful Act 2:	D6 and Syaza had enabled remote access to their respective desktop computers for the deletion of files from their respective desktop computers.
Wrongful Act 3:	Syaza had assisted in the removal of a Hard Disk Drive from D1's office.
Wrongful Act 4:	Syaza had uninstalled Microsoft One Drive from her desktop computer.

[110] D6, in her affidavit in reply affirmed on 20 November 2020 on her own behalf and on behalf of Syaza and Atiqah (encl. 111), denied that they had deleted files from their respective desktop computers, or that she and Syaza had allowed remote access to their desktop computers thus enabling the deletion of documents from their computers. D6 also denied that she and Syaza had uninstalled the iCloud drive "Microsoft One Drive" from hers and Syaza's computers or that Syaza had assisted in the removal of a hard disk drive from D1's office.

[111] However, during the hearing of the committal application on 30 May 2022, D6 admitted that she had refused the plaintiff's team entry into D1's office to execute the AP Order. D6 also admitted that she had deleted the Microsoft One Drive from her computer before she allowed the plaintiff's team into D1's office. When I asked her why she deleted the Microsoft One Drive, D6 replied because there were her personal files and the office files on the Microsoft One Drive.

[112] Syaza during the hearing admitted that she had downloaded documents from her personal computer onto a thumb drive and that she had ejected the thumb drive from the computer. When asked why she did so, Syaza said that it was because the documents were her personal documents. Syaza denied that she had downloaded any documents belonging to the plaintiff. She explained that her personal computer acted as the server for the whole D1 company. During the hearing Syaza said:

> Syaza: Kerana saya PC server. So saya punya kalau saya keluar pun dia memang akan server untuk semua dalam office itu.

[113] As discussed above, VL's forensic imaging of the personal computers at D1 had found that the cloud drive Microsoft One Drive had been deleted from Syaza's computer four seconds after she had conducted the search at 12:22:39pm on "how to log out one drive pc" and Microsoft One Drive was deleted from D6's computer at 12:41:31pm.

[114] VL also found that someone from the outside who was not present in D1's office had accessed D6, Syaza and Atiqah's computers by an external connection *via* a remote connection application "TeamViewer" to delete the files in the computers.

[115] VL's analysis showed that more than 9,000 files (documents and media related files) were deleted from D6's computer from 12:27:48pm to 12:28:59pm: see para. 4.2.21 of VL's second report.

[116] D6 had only allowed the plaintiff's team and the supervising solicitors entry into D1's office at 12.40pm on 13 August 2019 *ie*, after Syaza had left the office taking the thumb drive on which she had downloaded the documents into. As Syaza herself informed the court during the committal hearing, her computer acted as the server for the whole company.

Findings: Did D6, Syaza And/Or Atiqah Commit Wrongful Act 1, 2, 3 And/Or 4?

[117] VL's findings based on their forensic analysis of the computers in D1 showed that documents had been deleted from D2, D6, Syaza and Atiqah's computers.

[118] D6 and Syaza had admitted that they had deleted files from their computers, but they maintained they did not do anything wrong by deleting those files. D6 and Syaza's testimonies during the committal hearing shows that D6 and Syaza had manually deleted documents from their computers, and Syaza had manually downloaded documents from her computer onto a thumb drive and had removed the thumb drive out of D1's office before the plaintiff's team was allowed access into the office.

[119] Accordingly, I find that D6 had deliberately breached the AP Order and had committed the Wrongful Acts 1 and 2. I also find that Syaza had deliberately breached the AP Order and had committed the Wrongful Acts 1, 2, 3 and 4.

[120] As for Atiqah, I believe her testimony that she did not deliberately delete the documents from her computer, but the documents were being deleted remotely. From her demeanour, I find that Atiqah was telling the truth. Also, her testimony was in line with the findings made by VL that the documents in D2, D6, Syaza and Atiqah's computers were also deleted remotely from someone from the outside *via* remote connection application "TeamViewer". Hence, it can be reasonably concluded that during the time the plaintiff's team was trying to get entry into D1's office, one or more persons through the remote connection application "TeamViewer" had remotely deleted documents from D2, D6, Syaza and Atiqah's computers. This explains how the documents were deleted from D2's computer located in D1's office when D2 at that time was physically in his bedroom/ washroom at home.

[121] For this reason, I found that Atiqah was not guilty of contempt of court.

Sentencing For Contempt Of Court

[122] As stated by Mohd Nazlan Mohd Ghazali J (now JCA) in *Teoh Seow Chiew v. Mega Palm Sdn Bhd & Anor* [2021] 1 LNS 2400; [2021] AMEJ 2076 at para. 115, "this court had a wide discretion to sentence a contemnor, and that the primary consideration ought to be the public interest."

[123] The legal principles of sentencing for contempt of court were summarised by Wong Kian Kheong J in *Juris Technologies Sdn Bhd & Anor v. Foo Tiang Sin & Ors* [2019] 12 MLJ 785; [2019] 9 CLJ 617; [2020] 3 AMR 36. His Lordship then went to state that in para. 26 of his judgment that the legal principles governing sentencing for contempt of court are mere guidelines and cannot constitute binding legal precedents that sentences are imposed for contempt of court in the exercise of the court's discretion, and that the exercise is dependent on the particular facts of the case. Para. 26 of the judgment is reproduced below:

A [26] Learned counsel for the applicants and respondent have cited many cases regarding the appropriate sentence to be meted by the court to the respondent for a breach of the *ex parte* restraining order. *Sentences are imposed for contempt of court in the exercise of the courts' discretion. The exercise of such a discretion is dependent on the particular facts of the case in question. As such, cases regarding sentences meted for contempt of court provide mere guidelines and*
B *cannot constitute binding legal precedents from the viewpoint of the stare decisis doctrine.* (emphasis added)

[124] Learned counsel for the contemnors in their note of sentencing cited the judgment of See Mee Chun J (now JCA) in *Q & M Dental Group (Singapore) Ltd & Ors v. Dr Hong An Liang & Ors* [2019] 1 LNS 1286; [2019]
C AMEJ 0982, where she made reference to factors listed by the English High Court in *JSC BTA Bank v. Solodchenko* [2010] EWHC 2843 (Ch) that a judge ought to take into account for sentencing of contempt of court. The factors listed were:

D Whether the claimant is prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;

The extent to which the contemnor has acted under pressure;

Whether the breach of the order was deliberate or unintentional;

The degree of culpability;

E Whether the contemnor was placed in breach by reason of the conduct of others;

Whether the contemnor appreciated the seriousness of the breach;

Whether the contemnor has cooperated, and if so, at what stage and to
F what extent;

Whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea; and if so, what if any, reduction should be applied to the appropriate sentence;

Whether the contemnor has made a sincere apology for his contempt;

G The contemnor's previous character and antecedents; and

Any personal mitigation advanced on his behalf.

Did The Contemnors Tender An Unreserved Apology To This Court For Their Contempt?

H **[125]** After Dato's Harpal informed court that he had advised them to tender their apology to court, the contemnors and Atiqah were asked to address the court under oath in the witness box.

[126] In the witness box, all the contemnors denied that they had breached
I the AP Order or were in contempt of court. Whilst D6 and Syaza admitted to having deleted the documents and the Microsoft One Drive from their

computers in D1's office, they denied that they had breached the AP Order because they claimed that the documents deleted were their personal documents and the Microsoft One Drive had contained their personal documents.

[127] Additionally, Syaza, though admitting that she had downloaded the documents from her computer onto a thumb drive and had removed the thumb drive before the plaintiff's team and the supervising solicitors were allowed entry into D1's office to execute the AP Order, denied that she had done anything wrong or had breached the AP Order. She said the documents downloaded were her personal documents and the thumb drive belonged to her sister.

[128] D2 did not apologise to this court for having defied and/or disobeyed the AP Order or that he was in contempt of court. Instead, he apologised "over the mistake and the hassle cause over during the whole process" of the execution of the AP Order.

[129] Additionally, the contemnors' apologies tendered were reserved on their written submission. In their written submission and written submissions in reply, the contemnors denied that they had committed any acts of contempt during the execution of the AP Order. They submitted that the plaintiff had brought this contempt proceedings against them in bad faith and the committal application is "an abuse of court process, *mala fide* and a tactic to intimidate and embarrass the proposed contemnors (the respondents)" and to obtain an unfair advantage against the defendants".

[130] At the time of tendering their apologies to this court, the contemnors had not retracted any of the averments made in their affidavits and written submissions. In keeping with their reliance on their written submissions, each of the contemnors, when asked by me, whilst under oath in the witness box, maintained that they had not breached of the AP Order.

[131] Additionally, none of the contemnors showed any genuine remorse or repentance in tendering apologies to this court. From his demeanour, I found that not only did D2 not show any genuine remorse but he appeared to be amused when he was tendering his apology to this court.

Did The Contemnors Plead Guilty To Contempt Of Court?

[132] At the request of learned counsel for the contemnors, the hearing was adjourned to 24 June 2022 to enable them to file their written submissions on sentencing.

[133] During the sentencing hearing on 24 June 2022, learned counsel for the contemnors submitted that their clients had pleaded guilty. As none of the contemnors had told this court during the hearings on 30 May 2022 and 24 June 2022 that they plead guilty to having breached the AP Order and/

or to contempt of court, I asked their counsel when did the contemnors plead guilty. Mr. Ivanpal Singh Grewal replied that by tendering their apologies means they had pleaded guilty to the contempt.

[134] Respectfully, I am unable to agree with Mr. Ivanpal that by their act of tendering their apologies in this court, the contemnors had pleaded guilty to having committed the wrongful acts in O. 52 statements and are in contempt of court. This especially in light of the fact that the apology given were reserved on the contemnors' written submissions, their continued denial of having breached the AP Order and their express criticism of the AP Order that it was the "vague, ambiguous and oppressive nature of the AP Order that had rendered much confusion and chaos" during the execution of the AP Order.

[135] It is pertinent to note that in the contemnors' note on sentencing (encl. 245) filed after the hearing on 30 May 2022, learned counsel for the contemnors stated that the contemnors "pleaded guilty" in quotation marks. Paragraph 2 of the contemnors' note on sentencing is reproduced below:

> 2. The Contemnors tendered an unreserved apology for the acts of contempt before the hearing of the substantive contempt application. In other words, the Contemnors "pleaded guilty" in respect of the contempt changes and plead clemency from this Honourable Court in sentencing.

Have The Contemnors Purged Their Contempt?

[136] The contemnors have not purged their contempt. To date, none of them have provided to the plaintiff any of the documents and emails that had been deleted, hidden and/or removed from the computers in D1's office.

[137] During the sentencing hearing, I asked counsel for the contemnors whether they have purged their contempt by delivering up all the documents detailed in Sch. B of the AP Order. To my question, Dato' Harpal first replied that the AP Order is over. And then he said that he was informed that the documents were not asked for. Thereafter Mr. Ivanpal informed this court that the documents are subject to the plaintiff's discovery application (encl. 112), which the defendants are currently appealing to the Court of Appeal. Mr. Ivanpal argued that by reason of the plaintiff's discovery application, the contemnors are no longer required to deliver up the documents that were the subject of the AP Order in order to purge their contempt.

[138] The plaintiff in encl. 112 had applied for the discovery of documents namely D1's tax records, accounting records, minutes of its members meeting and its board of directors' meetings, and several hard disk drives that the forensic imaging of the computers showed were connected to D2, D5, Syaza and Mariama's personal computers at D1's office. At the conclusion of the hearing of encl. 112 this court allowed the plaintiff's application and

ordered the discovery of the said documents. The defendants have appealed against the decision – the appeal is currently pending hearing at the Court of Appeal.

[139] In *Juris Technologies* (*supra*), the contemnor had admitted to deleting the files on his laptop in breach of an *ex parte* court order. He then sought to purge his contempt by downloading the contents of the files he had deleted from his personal cloud drive onto a thumb drive and handing the thumb drive to the applicant's forensic investigators. The court nevertheless found that the contemnor had not purged his contempt because no expert evidence was adduced by the contemnor to show that the contents of the deleted files were the same as the documents downloaded onto the thumb drive.

[140] In contrast, the contemnors in this case had not sought to purge their contempt by delivering to the plaintiff the deleted and/or removed documents and emails. Instead, their counsel informed this court that the contemnors do not have to deliver up the documents to purge their contempt because the plaintiff had filed an application for discovery for D1's documents. As of the day of the hearing of the committal application on 30 May 2022 and the sentencing on 24 June 2022, the proposed contemnors had yet to deliver up any of the documents that were deleted, removed and/or downloaded onto hard-disk drives/thumb drives from D1's computers and servers.

[141] With respect to Mr. Ivanpal, this court is unable to agree with his argument that the plaintiff's application for discovery negates the need for the proposed contemnors to deliver up the documents ordered in compliance with the AP Order in order to purge their contempt. In arguing that the proposed contemnors do not have purge their contempt because the plaintiff's subsequent discovery application, Mr. Ivanpal appears to ignore the fundamental principle of law that all orders and judgment of the court requires strict obedience and compliance, until and unless it is set aside.

[142] He also appears to neglect the general rule of law expounded by the Supreme Court in *Wee Choo Keong v. MBf Holdings Bhd* (*supra*), that a party in contempt cannot be heard further in the same proceedings for his own benefit until and unless he has purged his contempt.

[143] If this court were to agree with learned counsel that the contemnors do not have to purge their contempt of the AP Order because the plaintiff had filed an application for discovery for the documents after the contemnors had refused to deliver up the documents under the AP Order, to paraphrase Lord Diplock in *Attorney General v. Times Newspaper Ltd* [1974] AC 273, it would "inhibit citizens from availing them of the courts of law for the settlement of their disputes". It would also undermine the orderly and effective administration of justice.

A **Decision**

[144] In *MKini Dotcom* (*supra*), the Federal Court referred to the term "contempt of court" used by the English High Court in *R v. Gray* [1900] 2 QB 36 and by the House of Lords in *Attorney General v. Times Newspaper Ltd* (*supra*), which term includes:

B

(i) any act done or writing published calculated to bring a court or a judge of the court into contempt, or to lower his authority, is a contempt of court;

(ii) any act done or writing published calculated to obstruct or interfere with
C the due course of justice or the lawful process of the courts;

(iii) conduct in relation to particular proceedings in a court which tend to undermine or to inhibit citizens from availing themselves of the court for the settlement of their disputes.

D **[145]** I find that contemnors' conduct in deliberately disobeying the AP Order by deleting, removing and/or hiding the documents and their continued refusal to deliver up the documents was designed to bring this court into contempt. Their conduct was also calculated to lower the authority of Che Mohd Ruzima bin Ghazali J's (now JCA), the judge who had granted
E the AP Order to the plaintiff. In their written submissions, the contemnors expressly criticised the AP Order that was granted by the learned judge as "vague, ambiguous and oppressive". In para. 10 of the written submissions, the contemnors submitted:

> 10. The chronology of the execution of the AP Order is well ventilated
F in Paragraph 6 to 34 of Enclosure 109. **However, the vague, ambiguous, and oppressive nature of the AP Orders rendered much confusion and chaos during the execution of 13.08.2019 and 14.08.2019.**
>
> (emphasis added)

[146] Instead of applying for the setting aside of the AP Order and a stay of
G the order pending its setting aside, the contemnors chose to deliberately defy and/or disobey the said order. They only filed an application to set aside the AP Order (encl. 153) after the plaintiff had filed these applications for committal against them. It should be noted that D2 in his affidavit in reply (encl. 110) had averred that he had sought his lawyer's advice after being served with the AP Order and that his lawyer had advised him to comply
H with the AP Order.

[147] As stated above, by reason of the contemnors' apology, Dato' Harpal had asked this court to sentence the contemnors with a strong reprimand and a fine for their contempt of court instead of a committal order. With respect to learned counsel, an apology is not an automatic "get out of jail card" for
I a contemnor. The apology must be unreserved. It must be made with genuine remorse. The contemnor must also have admitted to his wrongdoing, pleaded guilty to the contempt and purged his contempt before tendering the apology.

[148] The plaintiff had applied for the AP Order in order to preserve the documents and the evidence for the purpose of the trial and the just determination of this action. As observed by Wong Kian Kheong J in *Juris Technologies* (*supra*), based on "the wide use of electronic devices in this digital age … there is high risk and danger of deletion of evidence from electronic devices". His Lordship held that it was in the public interest for the court to impose the imprisonment sentence on the contemnor, "so as to send a clear message that all parties in proceedings shall obey strictly *ex parte* restraining orders (so as to ensure that *ex parte* delivery orders are not frustrated). The public interest to ensure strict compliance with the *ex parte* restraining order in this case clearly outweighs the respondent's plea in mitigation."

[149] The High Court in *Juris Technologies* (*supra*) had sentenced the contemnor to seven days imprisonment for deleting the documents from his laptop in breach of an *ex parte* delivery order. Unlike the contemnor in *Juris Technologies*, the contemnors in this instant case have not pleaded guilty to their contempt of court. In fact, to date they have yet to purge their contempt. They continue to refuse to deliver up the documents.

[150] I find that D2's actions in defying the AP Order were more wilful and contumelious than that of D6 and Syaza. The facts show that after being personally served with the AP Order, he had passed documents and devices to his neighbour for safekeeping; he had refused to hand over his handphones to the supervising solicitor; he lied and/or concealed his knowledge of the password to D1's email address; he lied and/concealed his knowledge about the Proton X70 which was one of his cars in which the plaintiff was to execute the AP Order. D2's actions bought time for D6 and Syaza to delete and remove the documents from their computers and for the documents on D1's computers and servers to be removed remotely.

[151] As for D6 and Syaza, although they are only members of staff at D1's office, they are under an obligation to strictly comply with the AP Order. Their actions in deleting documents from their PCs and deleting the Microsoft One drive, and Syaza's action in downloading the documents from her PC onto a thumb drive that she then removed from D1's officer, were a deliberate breach of the AP Order.

[152] The contemnors' deletion and/or removal of the documents had deprived the plaintiff of their right to adduce at the trial of this suit the contents of the deleted documents and emails in support of their action against the defendants. As held by Wong Kian Kheong J in *Juris Technologie*s (*supra*), the deletion "constitutes an unjust interference with the administration of justice" in this case. Per Lord Diplock in *Attorney General v. Times Newspaper Ltd* (*supra*), the contemnors' actions were "calculated to obstruct or interfere with the due course of justice or the lawful process of the courts".

[153] In sentencing the contemnors, I had taken into account the guidelines listed by the High Court in *Juris Technologies* (*supra*) and *Q & M Dental Group (Singapore) Limited & Ors v. Hong An Liang & Ors* (*supra*), including the contemnors deliberate act in breaching the AP Order, the prejudice suffered by the plaintiff by reason of the deletion and/or concealment of the documents, the fact that the contemnors had not admitted or pleaded guilty to the contempt, had not made an unreserved apology or shown genuine remorse, and had not purged their contempt. I had also factored in the contumelious behaviour and degree of culpability of each individual contemnor.

[154] After weighing up all these factors, and in the exercise of this court's discretion to sentence the contemnors for their contempt of court, I find that the just and appropriate sentence for D2 is fifteen days imprisonment sentence; for D6 is five days imprisonment sentence; and for Syaza is three days imprisonment sentence.

[155] The imprisonment sentence is meted out in the interest of justice to ensure compliance with order or judgment of court and to act as a deterrent for companies and their members of staff, no matter how senior or junior in the hierarchy, from deliberately defying and/or disobeying *ex parte Anton Piller* Orders.

So ordered accordingly.